

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of New        ) NOTICE OF ADOPTION  
Rules I through XXXVII, pertaining to        ) AND REPEAL  
the licensure, fees and regulation of        )  
barbers, cosmetologists, electrologists,) )  
estheticians and manicurists under the        )  
new Board of Barbers and Cosmetologists,) )  
and the repeal of all the rules in            )  
Chapter 120, Board of Barbers, and            )  
Chapter 132, Board of Cosmetologists,        )  
and ARM 24.121.101, interim rule            )

TO: All Concerned Persons

1. On August 5, 2004, the Board of Barbers and Cosmetologists published MAR Notice No. 24-121-2 regarding the public hearing on the proposed adoption and repeal of the above-stated rules at page 1666 of the 2004 Montana Administrative Register, issue no. 15.

2. A public hearing on the proposed adoption and repeal was held on August 30, 2004. Two public comments were received concerning the proposed rule changes. The Board has thoroughly considered the comments and the Board's responses are as follows:

COMMENT 1: One commenter expressed concern that if subsections (1)(t) and (u) of proposed New Rule XXXVII are read together, any conversation where a licensee gives a personal opinion about a customer's treatment of a condition or ailment would be diagnosing a medical condition and therefore considered unprofessional conduct. The commenter questioned the Board's authority to adopt this "new" requirement

RESPONSE 1: Subsections (1)(t) and (u) of New Rule XXXVII are not "new" requirements, and were previously adopted and enforced in the former Board of Cosmetologists' administrative rules. The Board agrees that the current use of "and/or" at the end of subsection (t) could be misinterpreted as requiring (t) and (u) to be considered together. The Board never intended the two subsections to be read or considered together, and has revised the language of the rule accordingly.

COMMENT 2: One commenter stated concern that the statutes of the former Board of Barbers had been repealed and should be now included in the proposed new administrative rules of the Board of Barbers and Cosmetologists.

RESPONSE 2: The Board appreciates the comments and points out that when the former Board of Barbers was combined with the former Board of Cosmetologists in the 2003 Montana Legislature, the substance of the former barbering laws were incorporated into Title 37, chapter 31, MCA. It was the intent of the two former Boards and the Department of Labor and Industry that neither the substance of the barbering occupation nor its regulation would change with the merger of the two Boards. The new combined Board was given the statutory obligation of licensing and regulating the practice of barbering, but the Board lacks the authority to adopt rules that essentially re-enact repealed statutes.

3. After considering the comments, the Board has amended New Rules XVII (24.121.807) and XXXVII (24.121.2301) as proposed but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE XVII SCHOOL CURRICULA (1) through (3)(a)(v) remain as proposed.

(vi) hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, wet setting), ~~250~~ 205 hours;

(vii) remains as proposed.

(viii) hair cutting (including the proper uses of implements, e.g., shears, razor, clippers, thinning shears), ~~250~~ 205 hours;

(ix) through (8) remain as proposed.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-304, 37-31-305, 37-31-311, MCA

REASON: This rule is being amended as a typographical error in the proposed rule notice had transposed the number of hours in (vi) and (viii) to read 250 hours instead of the correct 205 hours required for each of these curricula areas.

NEW RULE XXXVII UNPROFESSIONAL CONDUCT (1) through (1)(s) remain as proposed.

(t) advertising or otherwise implying that the licensee is providing treatment, healing, correcting or diagnosing any medical condition; ~~and/or or~~

(u) and (2) remain as proposed.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA

IMP: 37-1-136, 37-1-137, 37-31-301, 37-31-331, MCA

REASON: The Board is amending New Rule XXXVII in response to a comment that having "and/or" between subsections (1)(t) and (u) could imply that the two sections must be read and considered together. The Board has deleted the "and" from subsection (t).

4. After considering the comments, the Board has adopted New Rules I (24.121.101), II (24.121.201), III (24.121.301), IV (24.121.407), V (24.121.403), VI (24.121.405), VII (24.121.401), VIII (24.121.601), IX (24.121.603), X (24.121.605), XI (24.121.607), XII (24.121.609), XIII (24.121.611), XIV (24.121.801), XV (24.121.803), XVI (24.121.805), XVIII (24.121.809), XIX (24.121.811), XX (24.121.1101), XXI (24.121.1103), XXII (24.121.1105), XXIII (24.121.1301), XXIV (24.121.1501), XXV (24.121.1503), XXVI (24.121.1505), XXVII (24.121.1507), XXVIII (24.121.1509), XXIX (24.121.1511), XXX (24.121.1513), XXXI (24.121.1515), XXXII (24.121.1517), XXXIII (24.121.1519), XXXIV (24.121.1521), XXXV (24.121.1523) and XXXVI (24.121.2101), and repealed ARM 24.120.101, 24.120.201, 24.120.202, 24.120.401 through 24.120.404, 24.120.601 through 24.120.603, 24.120.607 through 24.120.609, 24.120.801, 24.120.802, 24.120.1001 through 24.120.1003, 24.120.1010 through 24.120.1015, 24.120.2301, 24.121.101, 24.132.101, 24.132.201, 24.132.202, 24.132.301, 24.132.401 through 24.132.404, 24.132.501 through 24.132.506, 24.132.511, 24.132.701 through 24.132.703, 24.132.709 through 24.132.713, 24.132.901 through 24.132.905, 24.132.911 through 24.132.915, 24.132.1101 through 24.132.1105, 24.132.1111 through 24.132.1115, 24.132.1301 through 24.132.1304, 24.132.1501 through 24.132.1503, 24.132.1701 through 24.132.1706, 24.132.1716 through 24.132.1722, 24.132.2101, 24.132.2301, and 24.132.2302 exactly as proposed.

BOARD OF BARBERS AND  
COSMETOLOGISTS  
WENDELL PETERSON, CHAIR

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State November 8, 2004